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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 116

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION #1418, ET AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

No. 1454

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION #1418, ET AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this cause on January 26, 1968, 389 F. 2d 369.

QUESTION PRESENTED

The sole issue for determination is whether the Norris-LaGuardia Act, 29 U.S.C.A. Section 101, et seq., prohibits the enforcement by a United States District Court of an arbitrator's award, when such an award it-

self directs a union to cease and desist from the breach of a no-strike clause in a collective bargaining agreement.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals has correctly decided the question involved, and there is no conflict thereon with the decisions of other Courts of Appeals or with applicable decisions of this Court.

Petitioners have cited no decisions of United States Court of Appeals of any other circuits to show a conflict with that of the case under consideration, and there are none. The issue in this case is not that decided in *Sinclair Refining Company v. Atkinson*, 370 U.S. 195 (1962), 82 S. Ct. 1328, 8 L. Ed 2d 440. There the question was whether the United States Courts are prevented by the Norris-LaGuardia Act from enjoining a strike in breach of a no-strike clause. In *Sinclair* there was not involved the question of authority of a Federal Court to enforce an arbitration award which itself enjoins the breach of a no-strike clause. This Court stated, 370 U.S. 195, at pp. 213-214:

> "The plain fact is that Section 301 (of the Labor Management Relations Act, 1947, as amended, 29 U.S.C.A., Section 185), as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional demands of the Norris-LaGuardia Act does not

directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."

II. *The enforcement of the arbitration award in this case is consistent with the developing federal law implementing the policy of encouraging agreements to arbitrate labor disputes.*

The Court has consistently declared, in a long line of cases beginning with *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), 77 S. Ct. 912, 1 L. Ed 2d 972, that Congress has established a national policy seeking to avoid strikes and to achieve and maintain industrial peace through collective bargaining and arbitration. See, also, *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), 80 S. Ct. 1347, 4 L. Ed. 2d 1409; *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960), 80 S. Ct. 1343, 4 L. Ed 2d 1403; *United Steelworkers of America v. Enterprise Wheel & Car Corporation*, 363 U.S. 593 (1960), 80 S. Ct. 1358, 4 L. Ed 2d 1424; *Wiley v. Livingston*, 376 U.S. 543 (1964), 84 S. Ct. 909, 11 L. Ed 2d 898, and *Carey v. Westinghouse*, 375 U.S. 261 (1964), 84 S. Ct. 401, 11 L. Ed 2d 320.

Moreover, arbitrators have for some years been issuing orders to end strikes, and they have rather freely been complied with. See, for example, *Ford Motor Company and United Auto Workers,* 1963 CCH *Labor Arbitration Awards,* 63-2 ARB 8491. The absence of court tests of the precise point over the years suggests that the principle is well received.

In *International Longshoremen's Association v. Philadelphia Marine Trade Association,* _____ U.S. _____, 88 S. Ct. 201 (1967), 19 L. Ed 2d 236, and in *Avco Corporation v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers,* _____, U.S. _____, 88 S. Ct. 1235 (1968), 20 L. Ed 2d 126, it was indicated that the basic premise of *Sinclair v. Atkinson* should be re-examined in a proper case, as perhaps we have here. If that were the basis of consideration, Respondent could hardly object to review, for it must acknowledge that the question presented there is one which industry and labor at large need to have settled for the advancement of industrial peace.

However, as noted above, *Sinclair v. Atkinson* is distinguishable and the decision of the Court of Appeals below is sound, it is clear, and it accords with the fundamental principles enunciated by this Court; in a word, the decision of the Court of Appeals follows logically and naturally from the line of Supreme Court decisions herein cited.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted this 7th day of June, 1968.

s/ Samuel Lang

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PROOF OF SERVICE

I, Samuel Lang, one of the attorneys for New Orleans Steamship Association, Respondent herein, a member of the Bar of the Supreme Court of the United States, hereby certify that on this 7th day of June, 1968, I served copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on Petitioners, the other parties hereto, by mailing copies in duly addressed envelopes, with first-class, certified

mail postage prepaid, to their attorneys of record, as follows:

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